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**NEW JERSEY STATE
BOARD OF ACCOUNTANCY**

OCT 08 2002

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ACCOUNTANCY

IN THE MATTER OF THE SUSPENSION OR	:	Administrative Action
REVOCATION OF THE LICENSE OF	:	
	:	
MICHAEL C. CORTESE, CPA	:	FINAL ORDER
	:	OF DISCIPLINE
TO PRACTICE ACCOUNTANCY IN THE	:	
STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey Board of Accountancy upon receipt of information which the Board reviewed and on which the Board, on January 24, 2002, entered a Provisional Order of Discipline. Michael C. Cortese, CPA ("respondent") through counsel filed a response to the Provisional Order of Discipline on March 23, 2002. The Board, having reviewed the materials before it and testimony at the hearing now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is a licensed accountant in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On October 19, 2001 respondent was convicted of the crime of conspiracy to defraud the Internal Revenue Service 18 U.S.C. § 371 in U.S. District Court, District of New Jersey.

3. Respondent was sentenced to six (6) months house arrest and probation for a term of five (5) years, a \$5,000.00 fine and a \$50.00 special assessment.

CONCLUSIONS OF LAW

1. The above criminal conviction provides grounds for the suspension or revocation of Michael C. Cortese's license to practice accountancy in New Jersey pursuant to N.J.S.A. 45:1-21(f) in that the crime of which respondent was convicted is one of moral turpitude and/or relates adversely to the practice of accountancy.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline (POD) revoking respondent's license to practice accountancy in the State of New Jersey was entered on January 24, 2002 and a copy was served on respondent. The POD was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence

supporting respondent's request for consideration and reasons therefor.

Respondent responded through counsel Mr. Alan Silber, Esq., by way of a March 27, 2002 Memorandum in Support of Michael Cortese's Fitness to Practice Accountancy and supporting Binder of Exhibits 1 through 50. In his submission respondent admits that he pled guilty to a one count Information charging him with conspiring with two physicians to impede the lawful function of the Internal Revenue Service in violation of 18 § U.S.C. § 371. He asserts, however, that the Board should exercise its discretion to permit Cortese to retain his license because his post offense conduct and rehabilitative efforts are laudatory and his pro bono services and assistance to others further a positive image of the profession. He further contends that respondent has led an exemplary life and the offense was an aberration not likely to reoccur.

Respondent submitted copies of 46 letters of support addressed to the criminal sentencing judge, the Honorable Stephen M. Orlofsky attesting to respondent's good character. Respondent's Statement, the Plea Agreement between the United States and Cortese signed October 30, 2000, Transcript of the sentencing hearing before the Honorable Stephen M. Orlofsky, October 19, 2001, and the Amended Judgment of Conviction, October 22, 2001, were also included in respondent's appendix and considered by the Board.

The Board reviewed respondent's submission and concluded that although he clearly did not contest the Findings of Fact or

Conclusions of Law of the POD, he did present a voluminous submission seeking a lesser sanction than the revocation proposed in the POD. Therefore, the Board determined to grant a hearing limited to what sanction should be imposed. Respondent was also permitted to develop the core facts of the conduct resulting in the conviction.

A hearing in mitigation of penalty was held before the Board at its regularly scheduled meeting on September 19, 2002. Deputy Attorney General Susan Berger appeared on behalf of the Attorney General, David Samson. Alan Silber, Esq., presented the matter for respondent. Also considered at the hearing was respondent's September 17, 2002 Supplemental Memorandum explaining the Offense Conduct. In this submission respondent again acknowledged that he was convicted of a crime of moral turpitude but he asserts that it is a more benign § 387 conspiracy to defraud the government. He describes the offense conduct by stating he assisted in the preparation of the returns for the physicians and Mag-Dan Diagnostics, P.A. In that return he falsely reported to the IRS that the income was solely attributed to one doctor when in fact it should have been attributed to the others.' The deputy noted for the record the Judge's comment regarding this behavior at the time of sentencing.

Supplemental Memorandum demonstrating Michael Cortese's fitness to practice accounting p.5.

But I want you to understand that I understand exactly what happened here with doctors Citarelli and Marucci in this case. And there is no doubt in my mind, Mr. Cortese, notwithstanding the protestations of the government and Mr. Silber to the contrary, that you knew exactly what was going on here and exactly what the doctors were doing with this sham corporation. [Transcript of the Sentencing Hearing before the Honorable Stephen M. Orlofsky, October 19, 2001, Pg. 14]

The deputy attorney general argued that it is the State's policy and the purpose of the Public Accounting Act to promote the reliability of information that is used in financial transactions. It is the Board's obligation to regulate those individuals who by virtue of a license hold themselves out to the public as having special competence.

At the hearing respondent offered into evidence R-1 three additional documents: a September 18, 2002 letter from Seymour Rubin, CPA regarding the Citarelli v. Citarelli divorce proceeding and Mag-Dan, Inc. purporting that the hidden income was not a factor in the physician's divorce, a September 17, 2002 letter from Robert L. Penza, Esq., also relating that the Citarelli v. Citarelli divorce proceeding was not impacted by respondent's

conduct and Mr. Silber's September 17, 2002 letter requesting Mr. Rubin's input and R-2: a 1099 tax form.

Respondent presented two witnesses, the Executive Director of the West Essex Rehabilitation Center (WERC) and respondent. Eugene M. Stefanelli, Ph.D, a long time friend of respondent, was offered as a witness for the purpose of establishing that respondent provided pro bono Certified Public Accounting Services to WERC, a non profit entity. He testified that if the entity were deprived of respondent's services it would have to substantially reduce the number of individuals to whom it provides care.

Respondent himself testified, attempting to minimize his conduct by asserting that he did not derive a profit from his felonious conduct. He claimed that his conduct was a misguided effort to assist long time friends. He also related how his income from his various government positions and consulting services were adversely affected by the conviction and subsequent negative publicity. Furthermore, respondent described the shame he has brought to his family and the loss of friendships. He also described his ill health. The State presented no witnesses.

We do not find his testimony in mitigation of penalty persuasive. Indeed, parts of his testimony were not credible. For instance, although he asserts he did not conspire with the physicians for his own personal gain, we were unable to ascertain

from his testimony if he earned \$70,000 per year or \$70,000 total from the services rendered to these physicians. Further, he clearly was disingenuous when he testified that his licensed services were necessary to WERC because he provided pro bono services to the entity. Under cross-examination and Board questions it became apparent that his firm charged for professional services to the entity thereby greatly reducing any gratuitous services he may have personally performed for the center. His evasive testimony continued as he testified to the economic harm a revocation would inflict -- under cross-examination he admitted to a government pension in excess of \$4,000 a month and lifetime health benefits for himself and his family. Respondent is fully aware that if his license is revoked he can continue to perform many of the accounting functions that he represented he now conducts and therefore continue to earn a livelihood. However he may not sign any documents using the CPA designation nor may he hold out to the public that he is a CPA.

We note that in his prepared written statement to the court he asserted that this Board would revoke his professional license. He made that statement in order to gain a more lenient criminal sanction, having benefitted from that argument, he now argued that his license should not be revoked. He cannot have it

Exhibit 37 Respondent's Appendix, respondent's statement to the court.

both ways. Finally respondent emphasized that his crime did not result in a loss to anyone. We disagree.

Respondent's criminal conduct erodes the confidence in the Certified Public Accountancy profession. The loss was to the trust the public puts in those privileged to maintain an accountancy license. Respondent deliberately misrepresented information to the IRS. He himself stated to the court: "I permitted my clients to manipulate the financial transactions of their business." He has tarnished his own reputation and that of the regulated community. Respondent argues that his conspiracy was "benign" and no one was hurt as a result of his friendship with the physicians. It surely strains credulity to suggest that respondent and his co-conspirators would devise a complex scheme involving a distinct company and fraudulent allocation of income as a mere "benign" arrangement lacking a nefarious purpose.

Respondent suggests that the Board exercise its discretion and impose a lesser sanction than revocation. In the Board's view, by his course of conduct, respondent has betrayed his responsibilities as a licensee and shown such disregard for the integrity of his certification as a CPA that no lesser sanction than revocation is appropriate. The penalty is designed to have both a punitive and deterrent effect. Respondent has already been shown leniency by the criminal authorities. He received a lesser

Id.

term of incarceration (6 months house arrest) in part because he represented to the court that his professional license would be revoked. We are unswayed by the numerous letters of support or by the witness who testified to respondent's "pro bono" work for pay. We find that it is absolutely uncontested that respondent was found guilty of a crime of moral turpitude and one that was directly adverse to the profession. His demonstrated attempts to minimize and rationalize his felonious conduct militates against leniency.

We have looked to prior discipline this Board has imposed for equivalent conduct and find that the sanction of revocation is consistent with precedent." Respondent in the course of rendering professional services misrepresented in official documents to the Internal Revenue Services. We find the conduct he pled guilty to involved a complicated scheme and pattern involving multiple acts which allowed his clients to misrepresent their business dealings to the government. We have considered the information presented and determined to finalize the Provisional Order of Revocation.

ACCORDINGLY, , IT IS ON THIS DAY OF , 2002

ORDERED that:

1. Respondent's license to practice accountancy in the State of New Jersey be and hereby is revoked.

S-1 Binder and Chart of previous Board of Accountancy Orders.

2. Reinstatement is not automatic, prior to resuming active practice in New Jersey respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance and further order of this Board shall constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on respondent's practice should his license be reinstated.

3. This Order is effective October 10, 2002.

STATE BOARD OF ACCOUNTANCY

By: Herbert Lipman
Herbert Lipman
President

At the conclusion of the September 19, 2002 hearing, the Board announced on the record a sanction of revocation, a five (5) year bar to the Board considering an application for reinstatement, costs and a civil penalty of \$5,000. Although the Board determined the record in this matter supports further sanctions, upon further legal review the Board President as the agency head, preliminarily determined not to impose discipline which went beyond that specified in the POD. This Order shall be presented to the full Board for ratification on the papers at its October 17, 2002 meeting.